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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	GEN Docket No. <u>90-314</u>
)	ET Docket No. 92-100
Amendment of the Commission's)	
Rules to Establish New)	
Narrowband Personal)	
Communications Services)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

AirTouch Paging, by its attorneys and pursuant to Section 1.429(d) of the Commission's rules, hereby seeks reconsideration in part of the Second Memorandum Opinion and Order^{1/} in the above-captioned proceeding. Specifically, AirTouch Paging is asking the Commission to eliminate eligibility restrictions for the narrowband response channels.^{2/} The following is respectfully shown:

I. Preliminary Statement

1. AirTouch Paging is a licensed provider of common carrier (Part 22) and private carrier (Part 90) mobile radio services throughout the United States. AirTouch Paging has extensive experience developing and implementing complex wide-area messaging networks, and has

^{1/} FCC 94-218, released August 25, 1994.

^{2/} These are the unpaired 12.5 kHz channels intended by the Commission to be coupled by existing paging carriers with one-way channels to increase functionality.

established itself as a serious, *bona fide* provider of mobile communications services to substantial segments of the public. Specifically, AirTouch Paging provides communications service to over 1.3 million units.^{3/} By industry estimates, AirTouch Paging is one of the fastest growing paging companies in the United States.

2. AirTouch Paging also has been a long-time proponent of the advanced messaging services^{4/} which are now defined by the Commission as narrowband PCS, and has taken a very active role at every stage of the docketed proceedings which have been conducted to fashion licensing and auction rules for narrowband PCS.^{5/} The seriousness of AirTouch Paging's interest in narrowband PCS services was demonstrated during the auction of nationwide narrowband PCS channels conducted in July 1994 at which AirTouch Paging was the high bidder -- and has now received a license -- for a

^{3/} AirTouch Paging is part of the AirTouch Communications family of companies which provides one-way and two-way wireless communications services throughout the world.

^{4/} AirTouch Paging (through its predecessor, PacTel Paging) participated in experimental programs to develop advanced messaging services known as Advanced Architecture Paging and Ground to Air Paging, and was an applicant for pioneer preferences for these services. See PP-38 and PP-39.

^{5/} See PP Docket No. 93-253 (Competitive Bidding) and ET Docket No. 92-100 (Narrowband Rules).

single^{6/} asymmetrically paired (50 kHz-12.5 kHz) nationwide PCS license.^{7/}

II. The Commission Should Further Expand Eligibility to Hold Response Channel Licenses

3. Among other things, the Second Memorandum Opinion and Order amended Section 24.130 of the Commission's rules^{8/} to expand eligibility to hold licenses for 12.5 kHz narrowband PCS response channels. As originally adopted, Section 24.130 provided that such licenses could be held only by existing common carrier and private carrier paging licensees authorized under Part 22 or Part 90 of the rules as of June 24, 1993 who operated at least one base station in the MTA or BTA for which they sought a paging response channel license. Upon further consideration, the Commission decided that this eligibility restriction was too narrow.

4. As amended, Section 24.130 now provides that response channels may be held by any licensee operating a conventional one-way paging base station that, on the date the licensee files an application to participate in an

^{6/} As the Commission is aware, others against whom AirTouch will be competing in the provision of narrowband services garnered multiple channels. Not surprisingly, AirTouch Paging has an interest in additional spectrum in order to be able to compete effectively.

^{7/} AirTouch Paging subsequently made the required down payment, filed its long form application, had its application granted, and made the requisite license payment.

^{8/} 47 C.F.R. § 24.130 (1994).

auction for the response channels, serves some portion of the MTA or BTA that encompasses that base station or that is partly or wholly overlapped by the licensee's service area (generally defined as the area within a 32.2 km (20-mile) radius of the licensee's base stations). While this relaxation of the eligibility restriction is welcomed, AirTouch Paging respectfully submits that it does not go far enough.^{9/} The Commission should eliminate all eligibility restrictions for the paging response channels.^{10/}

5. The idea of restricting eligibility for the response channels arose prior to the Commission's adoption of auction procedures.^{11/} The apparent reason for the eligibility restrictions was to limit the pool of lottery applicants to those local carriers with the greatest need for response capacity in an effort to get the licenses into

^{9/} The Commission's action amending Section 24.130 came in response to a single Petition for Reconsideration, on which only one party commented. See Second Memorandum Opinion and Order at ¶3 (citing the Petition for Reconsideration of Association of Business and Educational Radio ("NABER") and the comments thereon of Paging Network, Inc.) Consequently, the Commission's action in the Second Memorandum Opinion and Order is based on a limited record.

^{10/} AirTouch Paging does not seek reconsideration of the provisions of Section 24.130 that limit the number of response channels that may be held by a single licensee within a service area until two years after license grant and that state that response channels do not count toward narrowband PCS multiple ownership limits.

^{11/} See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, 8 FCC Rcd. 7162, 7195 (1993), adopting rule section 99.405(a).

the hands of those who would put them to the highest and best use.^{12/} Now, this objective can be accomplished through the auction process -- which is designed to get licenses into the hands of those who value them most highly -- without Commission-defined restrictions on the nature and extent of the local presence that is required to be eligible.

6. Consequently, AirTouch Paging now is convinced that the Commission should reexamine who may be eligible for the response channels and what frequencies the response channels may be coupled with. Comments filed by interested parties, and the resulting First Report and Order, in ET Docket No. 92-100 were premised upon a lottery selection method where it made sense to restrict eligibility to those who could best use the channels thereby preventing speculation. Now that the Commission will use auctions, rather than lotteries, to select response channel licensees, the auction process itself will weed out speculative applicants. Indeed, the applicants willing to bid the most for these channels will be those who either have existing

^{12/} See id. at 7165 ¶20 ("We also concur with those commenters that suggest that some response channels be provided for use by existing licensees."). See also Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Memorandum Opinion and Order, FCC 94-30 (released March 4, 1994) at ¶26: ("The paging response channels are limited to mobile-to-base transmissions and may be used only in a paired manner with existing paging channels to provide mobile-to-base station communications.").

paging channels, or new narrowband PCS licenses.^{13/} Since the original premise behind reserving these channels has evaporated, the Commission should eliminate eligibility requirements for these channels.

7. AirTouch Paging believes that maintaining local presence eligibility restrictions will prove to be difficult to administer. For example, carriers who have the right to serve an area pursuant to a regional or nationwide paging license, but have not yet established local facilities in a particular area, will no doubt seek waivers of the eligibility rule at locations where they are planning on constructing facilities in the near term.^{14/} Similarly, carriers who are operating just outside of the defined local service area will not doubt seek waivers of the 20-mile provision based upon the argument that de minimis variations

^{13/} The winners of the nationwide narrowband PCS auction were all established paging operators. AirTouch Paging suspects that most of the winners of remaining narrowband PCS spectrum to be auctioned also will be existing paging operators, because they will have the ability to use existing infrastructure to achieve economies of scale and scope.

^{14/} One solution was proposed by NABER in its Ex Parte Letter dated June 29, 1994. In that letter, NABER proposed that all "carriers who have receive or are eligible for exclusive licenses from the Commission as of May 10, 1994 would be eligible to apply for response channels in all trading areas in which they are otherwise eligible to be licensed." Id. at 2.

should be allowed.^{15/} Eliminating the local presence requirement will relieve the Commission of the burden of resolving disputes and acting on requests for waivers that are likely to arise in connection with the definition of "service area" contained in current Section 24.130.^{16/}

8. As the Commission proceeds to drop the eligibility restrictions for the response channels, it should also eliminate the constraints on the spectrum with which the response channels can be coupled.^{17/} Rather than micromanaging the spectrum by dictating that the response channels can only be paired with "plain old paging" channels, the Commission should expand the permissible use

^{15/} As the Commission noted in the Second Memorandum Opinion and Order, existing paging systems have service areas that vary greatly. This being the case, the Commission's attempt to establish a "brightline" benchmark (Second Memorandum Opinion and Order at ¶9) of 20 miles is likely to result in further debate on the appropriate standard. Elimination of the restriction will provide a simpler and more effective rule.

^{16/} The Commission has been burdened by waiver requests in analogous settings. For example, numerous private carrier paging operators have sought relief from the eligibility rules adopted with respect to grandfathered exclusivity on PCP channels. See, e.g., Public Notice, Report No. 1999, Petitions for Reconsideration and/or Clarification and Requests for Waiver of Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz (PR Docket No. 93-35), released February 17, 1994.

^{17/} At present, the rules restrict the use of the 12.5 kHz channels to being paired with Part 22 or Part 90 paging channels.

and allow couplings with any Part 22, Part 90 or Part 24 channel.^{18/}

9. It is difficult for the Commission to predict whether the best public use of a response channel would be to utilize it in connection with an existing paging channel or a newly allocated narrowband PCS channel. For example, a licensee of a nationwide unpaired 50 kHz channel^{19/} might seek response capacity in a few major metropolitan areas in order to implement a return link system to increase capacity where it is most needed. Ultimately, decisions of this nature regarding optimal usage are best left to market forces, rather than being usurped by agency predeterminations.

10. Expanding the permissible pairings for the response channels also is consistent with the trend by which all wireless commercial mobile services are being viewed as a family of interrelated services that are best subjected to a common and consistent regulatory scheme.^{20/} Maintaining distinctions between Part 22, Part 90 and Part 24 licensees

^{18/} AirTouch Paging does not go so far, however, as to suggest that response channels can be used with any spectrum. AirTouch Paging believes the Commission should continue to require that the response channels be coupled with paging or narrowband PCS channels authorized under Parts 22, 24, and 90.

^{19/} AirTouch Paging does not hold a 50 kHz unpaired nationwide channel.

^{20/} See GN Docket No. 93-252 (Regulatory Treatment of Mobile Services).

regarding the beneficial uses to which they can put the 12.5 kHz channels is contrary to current regulatory philosophy.

11. In sum, AirTouch Paging believes the best solution is to eliminate all eligibility and use restrictions on the response channels. Removing the restriction will permit the greatest participation by applicants and will enable existing operators to utilize these channels to their fullest extent.^{21/} AirTouch Paging's proposed change will significantly expand eligibility to hold response channels. Increased competition, in the form of increased bidding activity, is likely to result. In the process, a primary goal articulated by the Commission in deciding to use auctions -- ensuring that a license will be obtained by the party that values that license most highly -- will be furthered.^{22/}

^{21/} There is a problem with restricting the use of channels among different outbound channels. If a licensee needs additional capacity on its narrowband PCS channels and has free capacity on its response channels, it nonetheless will be required to spend additional capital to upgrade its narrowband channels, rather than utilize its response channels. This obviously does not serve the public interest.

^{22/} The Commission has not announced what auction method it will use for these channels, but has indicated that simultaneous multiple-round auctions "are easier and less expensive to implement than we earlier anticipated." See Third Report and Order and Further Notice of Proposed Rule Making, PP Docket No. 93-252, GEN Docket No. 90-314, ET Docket No. 92-100, FCC 94-219, released August 17, 1994, at ¶9. In making a final determination of the auction method for response channels, the Commission should consider the increased interest in such channels that will result if

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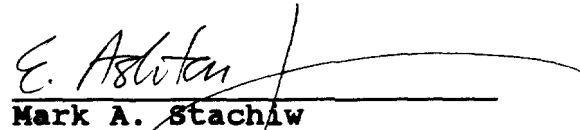
The limitations on response channel eligibility adopted in the Second Memorandum Opinion and Order no longer can be justified in view of the Commission's intent to award the channels to the entities that most value them.

WHEREFORE, AirTouch Paging requests that on reconsideration of the Second Memorandum Opinion and Order in GEN Docket No. 90-314 and ET Docket No. 92-100, the Commission amend Section 24.130 of its rules consistent with this Petition for Reconsideration.

Respectfully submitted,

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^{22/}(...continued)

eligibility standards are relaxed, and should use the simultaneous multiple-round auction method, with which both the Commission and the bidders (existing paging licensees) will have had significant experience.

CERTIFICATE OF SERVICE

I, Sondra R. Rich, hereby certify that on this 7th day of October, 1994, I caused a true and correct copy of the foregoing Petition for Reconsideration of AirTouch Paging to be delivered by hand to the following:

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